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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
10 078,624	02 19 2002	Tim-Hermann Kordes	3431-011370	5624

7590 05 15 2003

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EXAMINER

LOCKER, HOWARD J

ART UNIT	PAPER NUMBER
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1661

DATE MAILED: 05 15 2003

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Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES DEPARTMENT OF COMMERCE
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2

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on February 19, 2002

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ ~~Claim(s)~~ The claim is ~~is~~ pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

☒ ~~Claim(s)~~ The claim is ~~is~~ rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved ☐ disapproved ☐.

☒ The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All ☐ Some* ☐ None ☐ of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serail Number) _____

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of Reference Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

10/078624
PTOL-326 (Rev. 10/95)

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

1. The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties and its antecedents and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention and of the manner and process of making and using it in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

In plant applications filed under 35 U.S.C. 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling.

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

The disclosure is objected to under 37 CFR 1.16(b)(1) and under 35 USC 101, first paragraph, because the specification presents neither a clear and complete botanical description of the plant and the characteristics which define same per se, and which distinguish same over related or similar known cultivars and antecedents.

More specifically:

A. In the interest of clarity, the specification should positively state that the instant cultivar originated as a single plant from the stated cross. Such language should be incorporated systematically into any/all copending or future plant patent applications.

B. In sheet 2 of the submitted photographic illustrations, a figure designated as "Fig. 1-a" appears, which is not accounted for in the specification. This should either be deleted from the photographic illustrations or positively accounted for in the brief description of the drawings.

C. It is not understood how older wood is stated to bear "a few prickles" (page 4, line 3), and "many" thorns (page 4, line 8). Correction and/or clarification is necessary. The plant would appear to bear numerous prickles/thorns on the flowering stems. Main canes have not been illustrated.

D. Relative to leaf size as set forth on page 4, the specification should state whether such is reflective of the 3, 5, or 7 leaflet leaf. Additionally, it would appear that the recitation "3-7 leaflets" should be amended to "3, 5, or 7 leaflets" to properly reflect the expression of the plant.

E. Petiole and rachis characteristics should be accounted for more completely, such as by specifying the existence of prickles on the underside thereof (as illustrated). Additionally, petiole length as set forth in the

specification should be reviewed and amended as necessary so as to be accurate

F. At the last line of page 4, the designation 185A is in the Greved-Purple Group, not the Greved-Red Group. Correction and/or clarification is necessary.

G. That thorn shape is properly characterized as "deep concave" does not appear to reasonably correspond to the plant as illustrated.

H. Characterization of flower form upon opening as "pointed" does not make sense. Correction to a more acceptable and apt term is necessary.

I. That the reverse petal coloration is a darker reddish purple than the upper petal surface when opening does not appear to reasonably correspond to the plant as illustrated.

J. Per the submitted illustrations, characteristic fade of the bloom appears to be much greater than what is set forth in the specification as the open bloom as well as the petals illustrated appear to be almost white in coloration. If this is due to photographic error/reflectance, such should be set forth in the specification. If, upon review, the mature bloom and petals illustrated are found to be properly characteristic of the true coloration thereof, the specification should be amended to reasonably correspond to the submitted illustrations in this regard.

K. Characteristic flowering stem length should be set forth in the specification in the interest of providing as complete a botanical description of the plant as is reasonably possible.

L. On page 8 of the specification, the recitation "developed for one time use only" is not understood. Correction and/or clarification is necessary.

M. If additional information is now available relative to characteristic and observed disease resistance or winter hardiness, such should be imported into the specification in the interest of providing as complete a botanical description of the plant as is reasonably possible.

N. Characterization of petal/bloom color as "purple-cream" does not appear to reasonably correspond to the plant as illustrated. Correction and/or clarification is necessary. The general petal/bloom color characterization should reasonably correspond to the actual coloration of same, the color designations set forth in the specification, and to the plant as illustrated.

The above listing may not be comprehensive. Applicant should carefully review the disclosure and import into same any additional or corrected information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is being sought.

2. The claim is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant, for the reasons set forth in paragraph 1 above.

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Art Unit 1661

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3. Applicant is advised of the new optional procedures for amending the specification and claim under 37 CFR 1.121. The new procedures are optional until July 2003 and such may become mandatory at that time. Applicant may review same on the internet at the following site: <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/revamdtpna.htm>

4. Any inquiry concerning this communication from the examiner should be directed to Examiner Howard J. Locker whose telephone number is 703-308-2029 and whose normal work hours are Monday through Thursday from 6:30 a.m. to 5:00 p.m.


If it is not possible to reach the examiner by telephone, the examiner's supervisor, Mr. Bruce Campbell, can be reached at 703-308-4205.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

TELECOPY/FACSIMILE TRANSMISSION

Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to this Group via the PTO Fax Center in Crystal Mall 1 (CM 1). The faxing of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM 1 Fax Center number is 703-308-4556 or 703-305-3592.

Howard J. Locker/hjl
May 09, 2003


HOWARD J. LOCKER
EXAMINER
GROUP ART UNIT